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NO.

IN THE

Supreme Court of the United States

JANUARY TERM 1981

HONDA MOTOR COMPANY, LTD.,

Appellant,

vs.

WALTER P. COONS,

Appellee.

On Appeal from the Superior Court of New Jersey, Appellate Division

JURISDICTIONAL STATEMENT

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Questions Presented by Appeal

The decision of the New Jersey Superior Court, Appellate Division, below held that a foreign corporation, subject to "long-arm" *in personam* jurisdiction in the State by virtue of the relationship with its New Jersey distributor, may nevertheless be permanently barred from asserting the statute of limitations defense under that State's tolling statute relating to actions brought against foreign corporations. The New Jersey Appellate Division has therefore upheld the constitutionality of the State's tolling statute, N.J.S.A. 2A:14-22).

This result violates both the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution. It denies the benefit of a statute of limitations to a foreign corporation, unregistered to do business in New Jersey but deemed subject to that State's jurisdiction, while the same benefit is readily available both to domestic corporations and to foreign corporations registered to do business in the State. This appeal questions whether it is constitutionally permissible for a State to treat a foreign corporation as having minimum contacts sufficient for exercising *in personam* jurisdiction but insufficient for access to the statute of limitations.

The present appeal raises an issue identical with, or similar to that currently pending before this Court in *G. D. Searle & Co.* v. *Cohn,* cert. granted, 49 U.S.L.W. 3779 (U.S. April 20, 1981) (No. 80-644); *Kelsey-Hayes, Inc.* v. *Hopkins,* petition for certiorari filed, 49 U.S.L.W. 3448 (U.S. October 21, 1980) (No. 80-663) and *Maren Engineering Corp.* v. *Velmohos,* jurisdictional statement filed, 49 U.S.L.W. 3305 (U.S. October 17, 1980) (No. 80-629), regarding the constitutionality of the New Jersey tolling statute where applied against a foreign corporation amenable to service of process under that State's "long-arm" rule.

Parties to the Proceeding

1. Walter P. Coons, Plaintiff-Appellee
2. Honda Motor Company, Ltd. of Japan, Defendant-Appellant
3. American Honda Motor Company, Inc., Defendant below (not a party to appeal; summary judgment granted below on grounds of expiration of statute of limitations)
4. Richard Roe, Inc., et al., Defendants below. (unnamed and unserved parties)

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JURISDICTIONAL STATEMENT

Opinions Below

Appellant requests review of the decision of the New Jersey Superior Court, Appellate Division, reported *sub nom. Coons* v. *Honda Motor Company, Ltd. of Japan,* 176 N.J. Super. 575, 424 A2d 446 (App. Div. 1980). The Court's opinion is submitted herewith as Appendix "A", p. 1a, *infra.*

The Order of the trial court was rendered without a written opinion and is reproduced herewith as Appendix "B", p. 11a, *infra.*

Grounds for the Invoking of the Jurisdiction of this Court

The New Jersey Superior Court, Appellate Division, affirmed the judgment of the State's trial court which held that the statute of limitations was not available as a defense to the appellant corporation. The judgment of the Appellate Division was entered on *December 29, 1980.* A timely motion for leave to appeal was denied by the New Jersey Supreme Court on *March 31, 1981.* That Order is submitted herewith as Appendix "C", p. 13a, *infra.*

The notice of appeal to the Supreme Court of the United States from the judgment of the Superior Court of New Jersey, Appellate Division, was filed with the Clerk of the State Supreme Court and with the Clerk of the Superior Court of New Jersey, Appellate Division, on *May 11, 1981,* and is submitted herewith as Appendix "D", p. 14a, *infra.*

The judgment of the New Jersey Superior Court, Appellate Division, upheld the validity of a State statute, N.J.S.A. 2A:14-22, against federal constitutional challenge. The New Jersey Supreme Court refused further appellate review, making the decision of the intermediate Appellate Court the final judgment rendered by the State courts for purposes of the United State's Supreme Court's appellate jurisdiction. *McCarthy* v. *Philadelphia Civil Service Commission,* 424 U.S. 645 (1976); *Cohen* v. *California,* 403 U.S. 15 (1971); *Gallick* v. *Baltimore and Ohio Railroad Company,* 372 U.S. 108 (1963).

Accordingly, this Court's jurisdiction is invoked pursuant to 28 U.S.C. §1257(2) which provides in pertinent part as follows:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

Constitutional Provisions and Rules Involved

The Fourteenth Amendment to the United States Constitution:

> Section 1.
>
> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The New Jersey "Tolling Statute", N.J.S.A. 2A:14-22:

> "If any person against whom there is any of the causes of action specified in sections 2A:14-1 to

2A:14-5 and 2A:14-8, or if any surety against whom there is a cause of action specified in any of the sections of article 2 of this chapter, is not a resident of this state when such cause of action accrues, or removes from this state after the accrual thereof and before the expiration of the times limited in said section, or if any corporation or corporate surety not organized under the laws of this state, against whom there is such a cause of action, is not represented in this state by any person or officer upon whom summons or other original process may be served, when such cause of action accrues or at any time before the expiration of the times so limited, the time or times during which such person or surety is not residing within this state or such corporation or corporate surety is not so represented within this state shall not be computed as part of the periods of time within which such an action is required to be commenced by the section. The person entitled to any such action may commence the same after the accrual of the cause therefor, within the period of time limited therefor by said section, exclusive of such time or times of nonresidence or nonrepresentation."

New Jersey's "Long-Arm" Rule, N.J.R. 4:4-4:

"Service of summons, writs and complaints shall be made as follows:

* * *

(c) Corporations, Partnerships, and Associations.

(1) Corporations. Upon a domestic or foreign corporation, by serving, in the manner prescribed in paragraph (a), either an officer, director, trustee, or managing or general agent; or any person authorized by appointment or by law to receive serv-

> ice of process on behalf of the corporation; or the person at the registered office of the corporation in charge thereof. If service cannot be made upon any of the foregoing, then it may be made upon the person at the principal place of business of the corporation in this State in charge thereof, or if there is no place of business in this State, then upon any servant of the corporation within this State acting in the discharge of his duties. If it appears by affidavit of plaintiff's attorney or of any person having knowledge of the facts that after diligent inquiry and effort personal service cannot be made upon any of the foregoing and if the corporation is a foreign corporation, then, consistent with due process of law, service may be made by mailing, by registered or certified mail, return receipt requested, a copy of the summons and complaint to a registered agent for service, or to its principal place of business, or to its registered office."

New Jersey's Statute of Limitations for Personal Injury Actions, N.J.S.A. 2A:14-2:

> "Every action at law for an injury to the person caused by the wrongful act, neglect or default of any person within this state shall be commenced within 2 years next after the cause of any such action shall have accrued."

Statement of the Case

On October 30, 1974, while operating his Honda CB 350 motorcycle, Walter P. Coons was involved in an accident when his motorcycle fell over due to a tire blowout. The gas cap allegedly opened in the accident, a fire ensued and he was injured.

He thereafter commenced a products liability action on October 30, 1978, four years after the accident. The defendant, American Honda Motor Co. was served with the summons and complaint by mail at its Moorestown, New Jersey facility. American Honda is the wholly owned American distributor for products manufactured by the defendant Honda Motor Co., Ltd., a Japanese corporation not authorized to do business in New Jersey. American Honda, while authorized to do business in New Jersey, is a California corporation with its principal office located in Gardena, California.

Service was never attempted nor effected upon Honda Motor Co., Ltd. until after November 30, 1979, one year later, when an Order was entered allowing substituted service upon a Washington D.C. law firm acting as agents for Honda Ltd., in accordance with the terms of the *Traffic and Motor Vehicle Safety Act,* 15 U.S.C. 1399(e).

In New Jersey, the statute of limitations for personal injury actions, N.J.S.A. 2A:14-2, requires that suits be commenced within two years of the accrual of the cause of action. Suits are commenced, and the statute of limitations tolled, by the filing of a Complaint with the Clerk of the Superior Court, N.J.R. 4:2-2, after which time the summons and complaint are served upon the defendant.

The plaintiff failed to file his Complaint within the two-year statute of limitations applicable to this action, and was therefore barred from recovery. Plaintiff sought, however, to avoid the bar of the statute of limitations by invoking New Jersey's "discovery" rule, in his Complaint. Under the New Jersey "discovery" rule, the statute does not begin to run until the plaintiff discovers, or should have discovered by an exercise of reasonable diligence, that he may have a basis for an actionable claim. *Lopez* v. *Swyer,* 62 N.J. 267, 300 A2d 563 (1973).

In an answer filed on its behalf, American Honda asserted the statute of limitations as a defense. The Trial Court conducted a hearing required by *Lopez* and by Order entered December 26, 1979, granted American Hondas' motion for summary judgment dismissing the complaint against it as barred by the statute of limitations.

An answer was filed on behalf of Honda Motor Company, Ltd. which included as defenses that the New Jersey Court failed to have *in personam* jurisdiction, and in the alternative, that the plaintiff's claims were barred by the statute of limitations. Honda Motor Company, Ltd. then moved to dismiss the Complaint against it on these grounds, stating further that plaintiff was collaterally estopped as to the matter of the statute of limitations due to the Court's ruling in favor of American Honda Motor Co.

The plaintiff opposed Honda Motor Company Ltd's motion for dismissal of he Complaint, contending that under New Jersey's tolling statute he was not bound by the two year statute of limitations due to defendants nonrepresented status. At this juncture, the Appellant raised the constitutional issue against the application of the tolling provision to the instant matter, assuming *arguendo* that *in personam* jurisdiction was found to exist.

By Order entered on or about February 25, 1980, the Trial Court denied Honda Motor Company, Ltd.'s motion to dismiss. That court held that there was *in personam* jurisdiction and that based upon the ruling of the New Jersey Appellate Division in *Velmohos* v. *Maren Engineering Corp.*, 168 N.J. Super. 520, 403 A2d 927 (App. Div. 1979) the Appellant was not entitled to the benefit of the statute of limtations which had earlier been granted to American Honda.

Honda Motor Company, Ltd. then filed a motion for leave to appeal with the New Jersey Appellate Division, seeking reversal of the trial court's ruling. The intermediate Appellate Court granted permission for review and subsequently affirmed the Order of the trial court. The New Jersey Appellate Division, relying upon the ruling of the State Supreme Court in *Velmohos* v. *Maren Engineering Corp.*, 83 NJ 282, 416 A2d 372 (1980), held that the tolling statute did not violate the Equal Protection Clause of the Fourteenth Amendment where applied to foreign corporations unregistered in New Jersey.

Thereafter, Honda Motor Company, Ltd, moved for leave to appeal to the New Jersey Supreme Court. On or about March 31, 1981 the motion was denied, the highest state court declining to review the matter.

The federal constitutional issue of equal protection, initially raised by the Appellant before the trial court, was consistently asserted through the intermediate and highest state courts. The Appellant raised the additional federal constitutional issue of the due process clause before the New Jersey Supreme Court, which declined to consider the merits of either claim.

The Questions Presented are Substantial

The constitutional soundness of a State tolling statute, that operates to deny a non-represented foreign corporation any access to a statute of limitations, where juxtaposed with the modern concepts of a State's *in personam* jurisdiction, is a novel and substantial question. It has never been addressed by this Court. The issue will be argued before the Court next term in *G. D. Searle & Co.* v. *Cohn*, cert. granted, 49 USLW 3779 (US April 20, 1981) (No. 80-644). It also arises in *Kelsey Hayes, Inc.* v. *Hop-*

kins, petition for certiorari filed, 49 USLW 3448 (U.S. October 21, 1980) (No. 80-663) and in *Maren Engineering Corp.* v. *Velmohos,* jurisdictional statement filed, 49 USLW 3305 (U.S. October 17, 1980) (No. 80-629) which are currently pending before the Court.

It is firmly embedded in our jurisprudence that a State may exercise *"in personam"* jurisdiction over a nonresident defendant if predicated upon sufficient minimum contacts between the defendant and the forum State so that maintenance of the suit would not offend "traditional notions of fair play and substantial justice." *International Shoe Co.* v. *Washington,* 326 US 310, 316 (1945). This Court has often recognized that certain fundamental changes brought about by modern technology warranted, and compelled, a substantial relaxation of the traditional rule which had restricted a State's personal jurisdiction to its own territorial limits. *World-Wide Volkswagen* v. *Woodson,* 444 U.S. 286 (1980); *Hanson* v. *Denckla,* 357 US 235 (1958); *McGee* v. *International Life Ins. Co.,* 355 US 220, 222-223 (1957); *International Shoe Co.* v. *Washington, supra.*

The reach of a State's extraterritorial jurisdiction under the due process clause was clarified by this Court in *World-Wide Volkswagen* v. *Woodson, supra,* such that it is not unreasonable for a State to assert personal jurisdiction over a non-resident corporation "if the sale of a product of a manufacturer arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States." However, as Justice White instructed, at p. 297, the requisite foreseeability contemplated under the due process clause which gives rise to personal jurisdiction is not the mere likelihood that a product will find its way into the forum State, but rather it is "that the defendant's conduct and connection with the

forum are such that he should reasonably anticipate being hauled into Court there."

Similarly, under New Jersey's "long-arm" rule, N.J.R. 4:4-4(c)(1), service of process upon out-of-state defendants is authorized "to the uttermost limits permitted by the United States Constitution." *Avdel Corporation* v. *Mecure*, 58 NJ 264, 268, 277 A2d 207, 209 (1971).

The New Jersey Appellate Division below determined that a foreign corporation, not conducting business within New Jersey, could be brought into the State's courts predicated upon the foreseeability that its products will reach an ultimate consumer there. Accordingly, once a State subjects a foreign corporation to its laws, it must then allow that corporation the same access to a statute of limitations which is afforded to domestic corporations, and to other foreign corporations who by chance may maintain registered agents within the State. Yet, the intermediate Appellate Court below ruled that the criterion which would give rise to *in personam* jurisdiction over Honda Motor Company, Ltd. was insufficient to allow that out-of-state corporation the benefit of the two-year statute of limitations. That Court concluded that the statute of limitations would never be available to such a defendant. This novel decision deprives the Appellant of its Constitutional rights to due process and equal protection of the law. It requires review and reversal by this Court.

Under the Fourteenth Amendment's Equal Protection Clause, a statutory classification must bear some rational relationship to a legitimate State purpose. *Williamson* v. *Lee Optical Co.*, 348 U.S. 483 (1955). A State may not discriminate between persons similarly situated by means of a statute which designates the different classes on the basis of criteria wholly unrelated to the objective of that statute. *Reed* v. *Reed*, 404 U.S. 71, 75-76 (1971).

New Jersey's distinction between Appellant and its co-defendant American Honda for statute of limitations purposes does not manifest a rational basis. Both companies are foreign corporations similarly situated. Honda Motor Company, Ltd., was deemed amenable to service under New Jersey's "long-arm" rule by virtue of the manufacturer-distributor relationship which it maintained with its wholly-owned subsidiary, American Honda. In the alternative, as the Appellant asserted in the courts below, service of process could also have been effected under the Multilateral Treaty *Service Abroad of Judicial and Extra Judicial Documents,* 30 UST 361 (The Hague Convention, November 15, 1965).

The means available for service, when taken together with Honda Motor Company, Ltd.'s visibility by virtue of its products and the advertising of American Honda, makes the tolling of the statute of limitations wholly unreasonable. Honda Motor Company, Ltd consistently maintained a patent existence. By seeking to have its products reach ultimate consumers within New Jersey, the Appellant's conduct concomitantly facilitated servise of process. Yet despite the ease by which service of process could have been made, American Honda successfully asserted the bar of the statute of limitations while Honda Ltd was denied relief. Such a discriminatory result violates the equal protection clause, since a classification, to be allowed to stand, "must be reasonable not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of legislation, so that all persons similarly circumstanced shall be treated alike." *Royster Guano Co.* v. *Virginia,* 253 U.S. 412, 415 (1920).

The rationale of the New Jersey Appellate Division focused upon the presumed difficulty imposed upon plain-

tiffs in effectuating service upon out-of-state defendants. This reasoning is similarly inconsistent with the due process clause of the United States Constitution which condones the use of State power assuming that the exercise of that power bears a rational relationship to a legitimate societal interest. *Richardson* v. *Belcher,* 404 U.S. 78, 81 (1971); *Lochner* v. *New York,* 198 U.S. 45, 53 (1905). As the State's power to subject a foreign corporation to its "long-arm" jurisdiction increases, the legitimacy of the State's denying that nonresident defendant the repose of the statute of limitations becomes less defensible. The purported objective of New Jersey's tolling statute is not rationally related to the substantial impact which this exercise of State power affects upon distant corporations, as the State's "long-arm" reach expands in light of modern circumstances.

CONCLUSION

For the foregoing reasons, it is respectfully urged that this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

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APPENDIX A

Opinion of the Superior Court of New Jersey, Appellate Division

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

A-2857-79

WALTER P. COONS,

Plaintiff-Respondent,

v.

HONDA MOTOR COMPANY, LTD., of JAPAN, a corporation,

Defendant-Appellant.

Argued December 9, 1980—Decided Dec 29 1980

Before Judges Fritz, Polow and Joelson.

On appeal from Interlocutory Order of the Superior Court of New Jersey, Law Division, Middlesex County.

John I. Lisowski, argued the cause for appellant (Morgan, Melhuish, Monaghan & Spielvogel, John I. Lisowski, of counsel and on the brief).

Robert H. Jaffe argued the cause for respondent (Robert H. Jaffe and Howard G. Schlesinger on the brief).

Appendix A

The opinion of the court was delivered by

POLOW, J.A.D.

On October 30, 1974, plaintiff suffered serious injuries when thrown from his 1972 Honda CB350 motorcycle. In his complaint, filed October 30, 1978, he demanded damages from the designer-manufacturer, Honda Motor Co., Ltd. of Japan (Honda Ltd.) and its distributor, American Honda Motor Co., Inc. (American Honda) alleging that he suffered severe burns when the defectively designed gas cap opened during the accident and a fire ensued. American Honda, a wholly owned subsidiary of Honda Ltd., is authorized to do business in New Jersey and was promptly served. A year later, the court authorized service of process on Honda Ltd. through service on a Washington D.C. law firm acting as its agent, it was effected accordingly and Honda Ltd. became a defendant.

Summary judgment was granted in favor of American Honda based on its contention that plaintiff's suit was barred by the statute of limitations. In a separate opinion filed this day, we have affirmed that judgment against plaintiff. Here we deal with the appeal of defendant Honda Ltd. which contends that the court lacked in personam jurisdiction over it and that, in any event, it, too, should be afforded the protection of the statute of limitations, *N.J.S.A.* 2A:14-2.

In December 1977, American Honda notified the National Highway Traffic Safety Administration of its intention to recall certain motorcycle models because a defect had been discovered in the fuel filler cap release mechanism. Notices of the defect were forwarded to owners of the recalled motorcycles, including the 1972 Honda CB350,

in December 1977, but plaintiff claims he was unaware of the recall notice until July 1978 when so advised by his neighbor. Hence, he contacted counsel and suit was instituted on October 30, 1978. Appellant does not question the propriety of plaintiff's certification that after diligent inquiry and effort, personal service could not be made on any servant of Honda, Ltd., within this state, and that since the corporation is a foreign corporation with no place of business in this state, as far as service of process is concerned, it may be made by registered or certified mail return receipt requested to a registered agent. *R.* 4:4-4(c)(1). However, appellant attacks the ruling in favor of in personam jurisdiction, asserting lack of minimum contacts. Additionally, assuming *arguendo* that there is jurisdiction, it seeks protection of the statute of limitations.

Historically, jurisdiction was based upon a court's de facto authority over the person of the individual. *Pennoyer* v. *Neff*, 95 *U.S.* 714 (1878). Accordingly, the physical presence of a defendant within the jurisdiction was critical to a binding judgment. However, in *Int'l Shoe Co.* v. *Washington*, 326 *U.S.* 310 (1945), the Supreme Court extended the concept of due process to include in personam jurisdiction over a defendant not present within the territory of the forum provided he has "certain minimum contacts with it such that the maintenance of the suit does not offend 'traditional notions of fair play.'" *Id.* at 316. *See Milliken* v. *Meyer*, 311 *U.S.* 457, 463 (1940).

Nevertheless, the "minimum contacts" requirement, in order to satisfy due process, requires that the defendant have some contacts, ties, or relations with the forum state for in personam jurisdiction or that "a corporation exercis[e] the privilege of conducting activities within a state" thus enjoying the benefits and protection of its laws. *Int'l*

Shoe Co. v. *Washington, supra,* 326 *U.S.* at 319. Since 1945 there has been a discernible trend in the direction of expanding of in personam jurisdiction to the extent that, in 1974, a New Jersey Federal District Judge wrote that

> when a manufacturer deliberately seeks to profit from marketing its products in a state, he is doing business within that state as to each transaction, whether he does so by an agent, indirectly by mail or even more indirectly through a third party, who may have an exclusive distributorship. In such case there is nothing unfair, unjust or violative of due process standards in imposing *'in personam'* jurisdiction over such a manufacturer in an action predicated upon that transaction.
>
> Indeed, under such circumstances it would be fundamentally unfair for those who purchased products in New Jersey, relying on the protection of New Jersey's laws and courts to assure that the New Jersey's standards of fitness and warranties would be maintained, to be denied adjudication of their claims, and forced to travel throughout this nation, perhaps the world, seeking a forum in which the manufacturer of these goods was actually present. [*Gelineau* v. *New York Univ. Hosp.,* 375 *F. Supp.* 661, 667 (D.N.J. 1974)]

Two years after that decision, a Federal District court in Nebraska under circumstances similar to those here present, involving this very appellant corporation, denied its motion to dismiss for lack of in personam jurisdiction. *Hetrick* v. *American Honda Motor Co., Inc.,* 429 *F. Supp.* 116 (D. Neb. 1976). There, addressing the due process issue, the court said: "Where a foreign defendant has rea-

son to know that its products, traveling through interstate commerce will reach an ultimate consumer in any state of the United States, due process is satisfied." *Id.* at 118. Furthermore, it was reasoned that "it would be fundamentally unfair to allow a foreign manufacturer to insulate himself from the jurisdiction of the courts by use of an exclusive distributor." *Id.* at 118-119.

Our state courts have been active in interpreting and applying the minimum contacts test requiring that "the quality and nature of the contacts [be] such that maintenance of the suit does not offend 'tradition notions of fair play and justice.'" *Feldman* v. *Bates Manufacturing Co.*, 143 *N.J. Super.* 84, 89 (App. Div. 1976). *See Trustees of Structural and Ornamental Iron Workers Fund* v. *Huber*, 136 *N.J. Super.* 501, 505 (App. Div. 1975) certif. den. 70 *N.J.* 143 (1976). The necessary minimum contact may be found in the relationship between a foreign manufacturer and its New Jersey distributor. *Certisimo* v. *Heidelberg*, 122 *N.J. Super.* 1 (Law Div. 1972), aff'd sub nom *Van Eeuwen* v. *Heidelberg Easter, Inc.*, 124 *N.J. Super.* 251 (App. Div. 1973). Maintenance of such a suit does not offend the concepts of fair play and substantial justice. This is particularly true where as seems apparent here, the manufacturer-distributor relationship is an active one and explicitly designed to provide and ensure the sale of the foreign corporation's products. Obviously, the foreign corporation enjoyed substantial revenue from the sales within this state.

The most recent application of the minimum contacts standard by the United States Supreme Court, while rejecting long-arm jurisdiction, provided dictum entirely applicable here. In *World-Wide Volkswagen Corp.* v. *Woodson*, 444 *U.S.* 286 (1980), Mr. Justice White stated:

Appendix A

> [I]f the sale of a product of a manufacturer or distributor . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve, directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others. [*Id.* at 297]

In the situation *sub judice,* an affidavit of an assistant vice-president of American Honda reveals that appellant manufactures products in Japan and that sales are consummated in that country in accordance with American Honda's orders. All deliveries are made by appellant to American Honda f.o.b. Japan. Nevertheless, American Honda is a wholly owned subsidiary of appellant Honda, Ltd. We are convinced that a foreign manufacturer may not successfully insulate itself completely from suit in this country by such an arrangement where its product is negligently manufactured abroad and delivered for sale here and then avoid responsibility by use of its exclusive agent or distributor. *See Gelineau* v. *New York Univ. Hosp., supra,* 375 *F.Supp.* at 667; *Van Eeuwen* v. *Heidelberg, supra.*

We conclude that appellant's reliance on *World-Wide Volkswagen* is unavailing. Not only is it distinguishable factually in that there the corporation's products were not sold in the forum state but, in addition thereto, the dictum therein is logical and persuasive. Hence, we affirm the ruling of the trial judge denying appellant's motion to dismiss the complaint for lack of in personam jurisdiction.

Appellant's next argument has some surface appeal. Honda Ltd., reasons that if in personam jurisdiction may

be acquired simply by serving its legal agents in Washington D.C., then it is amenable to process and there is no reason to deny operation of the bar of the statute of limitations, *N.J.S.A.* 2A:14-2. Furthermore, it suggests that failure to apply that bar in this case and the statutory justification for tolling the statute under these circumstances, *N.J.S.A.* 2A:14-22, violate the equal protection clause of the Fourteenth Amendment to the United States Constitution. Presumably, to support that argument, appellant could show that the very same legal agent ultimately served with process in 1979 was equally available in 1976, before the two year period of limitations had expired.

Any lingering concern about the propriety and constitutionality of the statutory provision which tolls the statute of limitations with respect to claims against a foreign corporation not represented in this state by anyone upon whom service of process can be made, *N.J.S.A.* 2A:14-22, has been dissipated by recent decisions of the New Jersey Supreme Court and the Third Circuit Court of Appeals, *Velmohos* v. *Maren Engineering Corp.*, 83 *N.J.* 282 (1980) and *Hopkins* v. *Kelsey-Hayes, Inc.*, 628 *F.*2d 801 (3 Cir. 1980.

Velmohos involved a suit against two corporations of the State of Illinois, the designer and manufacturer of an allegedly defective shredder-baler. Since neither defendant maintained a registered office in this state or had agents for service of process located in New Jersey, the provisions of *N.J.S.A.* 2A:14-22 were held to have tolled the statute of limitations although long-arm service could have been made outside of this state within the two year period.

Justice Pashman reasoned that the statutory language "not represented in the state by any person or officer upon whom summons or other original process may be served"

is not interchangeable with "not amenable to service." *Velmohos* v. *Maren Engineering Corp., supra,* 83 *N.J.* at 288. Therefore, "unrepresented, foreign corporations subject to long-arm service are not exempt from *N.J.S.A.* 2A:14-22. *Ibid.*

The *Velmohos* court noted that *N.J.S.A.* 2A:14-22 (originally *R.S.* 2:24-7) was amended in 1949 for the express purpose of exempting "from the statute domestic corporations and those foreign corporations maintaining representatives in New Jersey." *Id.* at 289. Prior to 1949, the tolling provision did not deal with the foreign corporate defendant at all. *Ibid.* As the statement accompanying the 1949 Assembly Bill indicated: "'Foreign corporations *licensed to do business in New Jersey* are not deprived by judicial construction of the benefit of the statute of limitations. The purpose of this bill is to correct that situation.'" *Id.* at 290 (emphasis added). Obviously, amenability to service is not the appropriate test. Since the legislature "acted to remove only represented corporations from the tolling provisions of *N.J.S.A.* 2A:14-22," absent express language "incorporating amenability to long-arm service as an exemption from the tolling statute, that class of foreign corporations remains subject to its effect." *Id.* at 292-293 (footnote omited)." "[W]hatever hardship on foreign corporations might be caused by continued exposure to suit can be easily eliminated by the designation of an agent for service of process within the State." *Id.* at 293 n. 10; *Lemke* v. *Bailey,* 41 *N.J.* 295 (1963); *Govan* v. *Trade Bank and Trust Co.,* 109 *N.J. Super.* 271 (App. Div. 1970).

Appellant also projects the argument that "there are Honda dealers readily found in the yellow pages of any telephone directory," thus suggesting that Honda's high visibility warrants the conclusion that service could properly be effected in this state. The argument lacks force.

Appendix A

R. 4:4-(c) (1) deals only with "amenability" to service of process. *N.J.S.A.* 2A:14-22 tolls the statute of limitations with regard to foreign unregistered corporations "not presented in this state by a person or officer" for service of process. Without regard for the unlikely proposition that Honda dealers are agents of Honda, Ltd., the tolling provision of the statute refers to individuals who "represent" rather than those who perform details or who may be "minor functionaries" of the foreign corporation. *Hopkins* v. *Kelsey-Hayes, Inc., supra,* 628 *F.*2d at 808: "[T]he statutory tolling provision contemplates a much more significant corporate figure or presence—one capable of 'representing' the corporation—than does the service rule." *Ibid.*

Velmohos and *Hopkins* leave no room for doubt that the statute of limitations does not bar plaintiff's action against Honda Ltd. Rather, the tolling provision, *N.J.S.A.* 2A:14-22, preserves plaintiff's claim under the circumstances, there being no representative of appellant in this state. Hence, we affirm the determination of the trial judge in that regard.

Defendant's constitutional argument that *N.J.S.A.* 2A:14-22 violates the equal protection clause has been put to rest by the Supreme Court in *Lemke* v. *Bailey, supra,* 41 *N.J.* at 303 and, much more recently, in *Volmohos,* as demonstrated by the following comment:

> The flaw in defendants' argument is that it recognizes as rational only a distinction based on the impossibility of obtaining jurisdiction over a foreign corporation. It refuses to acknowledge that among amenable foreign corporations there are degrees of difficulty in effecting service. A recognition of these degrees of difficulty supplies a present rational basis for distinguishing between represented corporations and those unrepresented but amenable to long-arm service. [83 *N.J.* at 295].

The *Hopkins* court also addressed the equal protection argument in the following paragraph:

> Since long-arm service is more difficult to achieve than service within the state, it is not irrational for New Jersey to distinguish between two classes of foreign corporations. Those foreign corporations which are represented in New Jersey, and are thus more readily available to plaintiffs, are afforded limitations protections. On the other hand, the limitations statutes are tolled against foreign corporations which are not represented in New Jersey and thus are not as available to New Jersey plaintiffs. This distinction between represented and non-represented foreign corporations reflects the pragmatic difficulties which may be encountered by plaintiffs suing foreign corporations. Since service of process under the long-arm statute is more difficult and time-consuming to achieve than service within the state, and since out-of-state non-represented corporate defendants may be difficult to locate let alone serve, tolling the statute of limitations protects New Jersey plaintiffs and facilitates their lawsuits against such defendants. Because the tolling provision fulfills the legitimate state purpose of easing the special burdens of suits against non-represented foreign corporations, we cannot say that the distinction which it recognizes is irrational. [628 *F.*2d at 810-811 (footnote omitted)].

Accordingly, the order of the trial court denying the motion of Honda Motor Co., Ltd. of Japan for summary judgment, is affirmed and the matter is remanded for trial.

APPENDIX B

Order of the Superior Court of New Jersey, Law Division, Middlesex County, Striking Honda Ltd's Fifth and Sixth Affirmative Defenses

(Filed—February 28, 1981)

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION: MIDDLESEX COUNTY

Docket No. L-9016-78

Civil Action

WALTER P. COONS,

Plaintiff,

vs.

HONDA MOTOR CO., LTD. of JAPAN, et al.,

Defendants.

This matter having been opened to the Court by Robert H. Jaffe, P.A., attorneys for the plaintiff, Walter P. Coons, for an order striking the defendant's fifth and sixth affirmative defenses, Robert H. Jaffe, Esq., appearing and John I. Lisowski, Esq. appearing in opposition thereto and in support of motions to dismiss or, alternatively, for summary judgment; and for good cause shown;

It is on this 25th day of February, 1980;

Appendix B

ORDERED THAT there be stricken from the answer of the defendant Honda Motor Co. Ltd. of Japan its fifth affirmative defense of lack of jurisdiction;

IT IS FURTHER ORDERED THAT there be stricken from the answer of the defendant its sixth affirmative defense concerning the statute of limitation;

AND IT IS FURTHER ORDERED THAT the motions of defendant Honda Motor Co., Ltd. of Japan to dismiss the complaint or, alternatively, for summary judgment are denied.

HERMAN L. BREITKOPF, J.S.C.

APPENDIX C

Order of the Supreme Court of New Jersey Denying Motion for Leave to Appeal

(Filed—April 1, 1981)

SUPREME COURT OF NEW JERSEY

M-832 SEPTEMBER TERM 1980

WALTER P. COONS,

Plaintiff-Respondent,

v.

AMERICAN HONDA MOTOR CO., INC., et al.,

Defendants-Movants.

This matter having been duly presented to the Court, it is ORDERED that the motion for leave to appeal is denied.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 31st day of March, 1981.

STEPHEN W. TOWNSEND
Clerk

APPENDIX D

Notice of Appeal

IN THE

SUPERIOR COURT OF THE STATE OF NEW JERSEY,
APPELLATE DIVISION

Docket No. A 2857-79

HONDA MOTOR COMPANY, LTD.,

Appellant,

vs.

WALTER P. COONS,

Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that Honda Motor Company, Ltd., the above-named appellant, hereby appeals to the Supreme Court of the United States from the final judgment of the Superior Court of New Jersey, Appellate Division, affirming the application of the tolling provision of the statute of limitations and determining its constitutionality for a foreign corporation not registered to do business in the State of New Jersey, entered in an action

Appendix D

Docketed as A 2857-79 on December 29, 1980. The New Jersey Supreme Court denied a motion for leave to appeal on behalf of Honda Motor Company, Ltd., on March 31, 1981.

This appeal is being taken pursuant to 28 U.S.C. Sec. 1257(2).

MORGAN, MELHUISH, MONAGHAN & SPIELVOGEL
301 South Livingston Avenue
Livingston, New Jersey 07039
(201) 994-2500
Attorneys for Appellant,
Honda Motor Company,
Ltd.

By: JOHN I. LISOWSKI

Dated: May 11, 1981

Affidavit of Service

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss.:

JOHN I. LISOWSKI, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am an Attorney at Law of the State of New Jersey and am a partner in the law firm of Morgan, Melhuish, Monaghan and Spielvogel, Esqs., attorneys for appellant, Honda Motor Company, Ltd., in the above-captioned matter.

2. On May 11, 1981, I served a copy of the within Notice of Appeal to the Supreme Court of the United States upon the Clerk of the Supreme Court of New Jersey, and an original and copies to the Clerk of the Superior Court of New Jersey, Appellate Division, by having same deposited in the mailbox, with first class postage prepaid.

3. On May 11, 1981, I served a copy of the within Notice of Appeal to the Supreme Court of the United States upon James R. Zazzali, Attorney General of the State of New Jersey, by having same deposited in the mailbox, with first class postage prepaid, addressed to the Attorney General of the State of New Jersey, Department of Law and Public Safety, State House Annex, Trenton, New Jersey 08625, pursuant to the United States Supreme Court Rules, Rule 28.

4. On May 11, 1981, I served a copy of the within Notice of Appeal to the Supreme Court of the United States upon Robert H. Jaffe, Esq., attorney for the Plaintiff-Appellee, by having same deposited in the mailbox, with first class postage prepaid, addressed to Robert H. Jaffe,

Appendix D

Esq., 8 Mountain Avenue, Springfield, New Jersey 07081, pursuant to the United States Supreme Court Rules, Rule 28.

JOHN I. LISOWSKI

Sworn and subscribed to before
me this 11th day of May, 1981.

PHYLLIS REED
A Notary Public of the State of N.J.
My Commission Expires March 27, 1983.

Office-Supreme Court, U.S.
FILED
JUL 27 1981
ALEXANDER L. STEVAS,
CLERK

No. 80-2003

IN THE

Supreme Court of the United States

JANUARY TERM 1981

HONDA MOTOR COMPANY, LTD.,

Appellant,

vs.

WALTER P. COONS,

Appellee-Movant.

ON APPEAL FROM THE SUPERIOR COURT OF NEW JERSEY,
APPELLATE DIVISION

APPELLEE-MOVANT WALTER P. COONS' MOTION TO DISMISS

ROBERT H. JAFFE,

JAFFE & SCHLESINGER, P.A.,
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N.J. Appellate Printing Co., Inc. (201) 753-0200

QUESTIONS PRESENTED BY MOTION TO DISMISS

I. Should this appeal be dismissed on the basis it is from an interlocutory order of the New Jersey Appellate Courts rather than a final judgment within the meaning of 28 U.S.C. §1257(2)?

II. Should this appeal be dismissed on the basis it does not raise a substantial federal question under the criteria of 28 U.S.C. §1257(2)?

PARTIES TO THIS MOTION TO DISMISS

1. Walter P. Coons, Plaintiff-Appellee-Movant.

2. Honda Motor Company, Ltd. of Japan, Defendant-Appellant.

3. Richard Roe, Inc., et al., Defendants below (unnamed and unserved parties).

4. James A. Zazzali, Attorney General of the State of New Jersey.

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CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

In addition to the constitutional provisions, statutes and court rules cited in Appellant's Jurisdictional Statement, *New Jersey Civil Practice Rule* 4:42-2 of the Rules Governing the Courts of the State of New Jersey is applicable to this matter and reads as follows:

> 4:42-2. Judgment Upon Multiple Claims
>
> If more than one claim for relief is made in an action, by way of claim, counterclaim, cross-claim or third-party claim, the court may direct the entry of a final judgment upon less than all of the claims only if it determines that there is no just reason for delay. In the absence of such direction and determination any order or other form of decision, however designated, which adjudicates less than all the claims shall not terminate the action as to any of the claims, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims.

Additionally, *N.J.S.A.* 14A:13-11, likewise applicable to this matter and not cited in Appellant's Jurisdictional Statement reads as follows:

> 14A:13-11. Transacting business without certificate of authority.
>
> (1) No foreign corporation transacting business in this State without a certificate of authority shall maintain any action or proceeding in any court of this State, until such corporation shall have obtained a certificate of authority. This prohibition shall apply to
>
> (a) any successor in interest of such foreign corporation, except any receiver, trustee in

bankruptcy or other representative of creditors of such corporation; and

(b) any assignee of the foreign corporation, except an assignee for value who accepts an assignment without knowledge that the foreign corporation should have but has not obtained a certificate of authority in this State.

(2) The failure of a foreign corporation to obtain a certificate of authority to transact business in this State shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action or proceeding in any court of this State.

(3) In addition to any other liabilities imposed by law, a foreign corporation which transacts business in this State without a certificate of authority shall forfeit to the State a penalty of not less than $200.00, nor more than $1,000.00 for each calendar year, not more than 5 years prior thereto, in which it shall have transacted business in this State without a certificate of authority. Such penalty shall be recovered with costs in an action prosecuted by the Attorney General. The court may proceed in such action in a summary manner or otherwise.

STATEMENT OF THE CASE

For the purposes of the factual and procedural issues relevant to this motion to dismiss only, Appellee-Movant Walter P. Coons ("Coons") adopts the statement of the case of Appellant, Honda Motor Ltd. ("Honda Ltd."), set forth in its Jurisdictional Statement. Not mentioned in Honda Ltd.'s statement of the case, however, is the fact that the decision and order of the New Jersey Appellate Court in this matter rendered December 29, 1980, reported at 176 N.J. Super. 575, 424 A.2d 446 (App. Div. 1980), and the subsequent denial of leave to appeal by the New Jersey Supreme Court on March 31, 1981 constitutes interlocutory orders under New Jersey court rules which are subject to revision at any time before entry of judgment on the merits.

Another relevant procedural fact not made part of Honda Ltd.'s statement of the case is that service was not effected upon a duly authorized agent of the Appellant until discovery obtained by Appellee Coons of the investigatory file of the National Highway Traffic Safety Administration revealed the existence in Washington, D.C. of an agent of Honda Ltd. See Notice of Motion for Substituted Service upon Honda Ltd. and supporting papers (Appellee-Movant's Appendix at A3-4).

On June 19, 1981, this Court granted the request of Appellee Coons to extend the time to file this motion to dismiss up to and including July 26, 1981.

ARGUMENT

Point I

This Appeal should be dismissed on the basis it is from an Interlocutory Order of the New Jersey Appellate Courts rather than a Final Judgment within the meaning of 28 U.S.C. §1257(2).

Conveniently omitted from the "Statement of the Case" in the Jurisdictional Statement submitted by Honda Ltd. is the fact that the decision and order of the New Jersey Appellate Court being appealed from is interlocutory in nature and therefore not a final judgment within the meaning of 28 U.S.C. §1257(2).

There yet remains for determination by the trial courts of New Jersey numerous factual and procedural defenses raised by Honda Ltd. to the complaint of Appellee Coons (See answer to Complaint, Appellee-Movant's Appendix at B1-2). The determination of these issues in favor of Honda Ltd. would avoid the need for this Court to rule on the constitutional questions raised by the instant appeal.

The principle of judicial restraint that this Court could not be required to review any decision or order appealed under 28 U.S.C. §1257(2) except for a final judgment from a state court, even where there is drawn in question the validity of the statute of any state on the grounds of its being repugnant to the Constitution, enunciated in *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 43 L.Ed.2d 328 (1975), was recently reaffirmed in *Flynt v. Ohio*, __ U.S. __, 68 L.Ed.2d 486 (1981). That this is a civil case makes it an even more compelling situation for dismissal than the interlocutory order in *Flynt*, which involved a criminal prosecution.

It is further relevant for this Court to consider the fact that Honda Ltd. failed to obtain an order required under *Rule* 4:42-2 of the Rules Governing the Courts of the State of New Jersey whereby the trial court may direct the entry of final judgment upon less than all of the claims *only* if it determines that there is no just reason for delay. See 2/25/80 order of the New Jersey trial court striking Honda Ltd.'s Fifth and Sixth Affirmative Defenses, attached as Exhibit B to Appellant's Jurisdictional Statement. Since the determination required under *New Jersey Rule* 4:42-2 was not obtained and made part of the trial court's order reviewed by the New Jersey appellate court, the interlocutory order which Honda Ltd. seeks to have this Court review pursuant to 28 U.S.C. §1257(2) "is subject to revision at any time before the entry of judgment adjudicating all the claims."

Since dismissal of this appeal based on the interlocutory nature of the decision and order of the New Jersey Appellate Courts appealed from would not be on the merits, Appellant Honda Ltd. is free to reassert its motion for dismissal on constitutional grounds in the event of a decision by this Court that the New Jersey tolling statute at issue, *N.J.S.A.* 2A:14-22, denies foreign or non-resident corporations equal protection under the Fourteenth Amendment. That is, in the event this Court decides the similar issue in the pending case entitled *G.D. Searle & Co. v. Cohn*, 628 F.2d 801 (3rd Cir. 1980), *cert. granted*, __ U.S. __, 68 L.Ed.2d 293 (1981), in favor of the corporate defendant, Honda Ltd. is not precluded from again raising the same claims of due process and equal protection rights under the Fourteenth Amendment it has raised in New Jersey Appellate Courts.

On the other hand, a summary dismissal of this appeal would allow this matter which involves an acci-

dent which took place on October 30, 1974 to go forward to trial while the *Cohn* case is pending. It is also relevant to note that the defendant in this case is a foreign manufacturer incorporated in Japan and based on the contentions made in the New Jersey Appellate Courts did not have a registered agent in any state of the United States except for an agent required for a manufacturer under the Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1399(e). By contrast, the corporate defendants in *Cohn* and two other related cases pending before this Court dealing with *N.J.S.A.* 2A:14-22[1] are non-resident United States corporations who did not register to do business or otherwise provide representation in the State of New Jersey in the event of suit. This factual distinction in the status between the corporate defendant in *Cohn* and Appellant Honda Ltd., although an issue that only need be raised in the event this Court made a determination favorable to the corporate defendant in *Cohn*, is a matter that does deserve separate consideration and development in the trial and appellate courts of New Jersey before any final determination by this Court.

Point II

This Appeal should be dismissed on the basis it does not raise a substantial federal question under the criteria of 28 U.S.C. §1257(2).

Although this Court has granted *certiorari* of a question pertaining to the New Jersey tolling statute, *N.J.S.A.* 2A:14-22, in *G.D. Searle & Co. v. Cohn*, 628 F.2d 801 (3rd Cir. 1980), *cert. granted*, __ U.S. __, 68 L.Ed.2d 293 (1981), it is nonetheless respectfully submitted the Fourteenth Amendment issues raised by Honda

1. *Maren Engineering Corp. v. Velmohos*, 83 N.J. 282 (1980), Jurisdictional Statement filed 49 U.S.L.W. 3305 (U.S. October, 1980) (No. 80-629); *Hopkins v. Kelsey-Hayes, Inc.*, 628 F.2d 801 (3rd Cir. 1980), *petition for certiorari* filed, 49 U.S.L.W. 3448 (U.S. October, 1980) (No. 80-663).

Ltd. are not substantial federal questions under the criteria of 28 U.S.C. §1257(2). In fact, the very issues of due process and equal protection raised by Honda Ltd. have been settled by the recent decisions of this Court in *Western & S.L.I. Co. v. Bd. of Equalization*, __ U.S. __, 68 L.Ed.2d 514 (1981) and *World-Wide Volkswagen v. Woodson*, 444 U.S. 286, 62 L.Ed.2d 490 (1980).

In *Western & S.L.I. Co.*, it was held that the Fourteenth Amendment does not prevent the states from making reasonable classifications among corporations doing business in the State.[2] At the heart of this Court's holding was the proposition that a tax or other condition imposed by a state on an out-of-state corporation may be imposed for the "privilege" of doing business in the State providing such discriminatory treatment between foreign and domestic corporations:

> "bears a rational relation to a legitimate state purpose." 68 L.Ed.2d at 530.

The tolling statute at issue denies to corporations not registered or licensed to do business in the State of New Jersey the protection afforded by another New Jersey statute establishing a two year statute of limitation for negligence actions claiming damages for personal injuries, namely, *N.J.S.A.* 2A:14-2. Authority is not required for the proposition that a statute of limitations is a legislative enactment in derogation of common law promulgated for the benefit of persons who are entitled

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2. An earlier opinion of this Court, namely, *Crescent Cotton Oil Co. v. Mississippi*, 257 U.S. 129, 66 L.Ed. 166 (1921), not cited in *Western* held that a state may in its discretion impose conditions on the right of corporations to do business in the state. The conditions imposed may be to the extent of exclusion of the corporation altogether, provided no contract right or employment by the federal government is involved. The express constitutional basis for the decision in *Crescent Cotton Oil Co.* was that the inherent difference between corporations and natural persons is sufficient to sustain a classification making restrictions applicable to corporations only. 257 U.S. at 137.

to sue and be sued in a particular state. There is no national statute of limitations for negligence actions. To the contrary, the time limitations vary from state to state. For example, in contrast to the two year limitations period in New Jersey for negligence actions, New York has a three year statute,[3] and Florida has a four year statute.[4]

In this case Appellee Coons has alleged injuries including burns over 55 percent of his body directly attributable to a design defect in the fuel filler cap of a Honda Ltd. motorcycle which burst into flame when its tire blew on October 30, 1974 causing the vehicle to rise, the gas tank to open, and the fuel to explode on contact with the engine.

It was not until December 16, 1977, however, less than a year before Appellee Coons received a recall notice in June 1978 which gave him explicit notice of the defect, that Honda Ltd. admitted a dangerous design defect existed in the fuel filler cap release mechanism of certain of its motorcycles sold in New Jersey. (See Exhibit "C" to Notice of Motion for Substituted Service at page A8 of Appellee-Movant's Appendix.) Except for the tolling statute at issue, Appellee Coons would have been denied a cause of action against a manufacturer who until more than four years after being given notice by the National Highway Traffic and Safety Administration and several accidents such as the 10/30/74 incident involving Appellee Coons that there was a design defect. See National Highway Traffic Safety Administration, Office of Defects Investigation, Investigative Report O.D.I. Case No. C3-02 at page 12 (Appellee-Movant's Appendix at C1.)

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3. N.Y. Civil Practice and Rules Law §214 (McKinney 1976).

4. Fla. Stat. Ann. §95.11 (West 1980).

Far from discriminating against foreign corporations, as noted by the New Jersey Appellate Court in the decision challenged by Honda, Ltd., *Coons v. Honda Motor Company Ltd. of Japan*, 176 N.J. Super. 575, 582, 424 A.2d 486, 449-450 (App. Div. 1980), *N.J.S.A.* 2A:14-22 was amended for the explicit purpose of insuring that foreign corporations licensed to do business in New Jersey were not deprived of the benefit of the two year statute of limitations set forth in *N.J.S.A.* 2A:14-2.

When a foreign corporation is not registered to do business in the State of New Jersey, unless it is caught by the taxing authorities, it does not pay any taxes to the State, nor except by being licensed, does it become subject to safety and other regulations promulgated by a state. See *Eli-Lilly Co. v. Sav-on-Drugs*, 366 U.S. 276, 6 L.Ed.2d 288 (1961). Obviously, the denial of statute of limitation defenses to non-resident corporations which do not register to do business in the State of New Jersey serves a legitimate state purpose in encouraging corporations to so register.[5]

With respect to Honda Ltd.'s claim of due process deprivation, this Court has recently held in *World-Wide Volkswagen Corp. v. Woodson, supra*, that when the sale of vehicles by a manufacturer such as Honda Ltd. is not simply an isolated occurrence but arises from the effort of a manufacturer to serve "directly or indirectly"

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5. Appellee Coons concedes that where a state statute or requirement to obtain a certificate of authority to do business burdens interstate commerce, a substantial federal question is raised. See *Allenberg Cotton Co., Inc. v. Pittman*, 419 U.S. 20, 42 L.Ed.2d 195 (1974). However, under *N.J.S.A.* 14A:13-11, the failure of a foreign corporation to obtain a certificate of authority to transact business in New Jersey does not prevent such corporation from defending on the merits any contract action and thus does not burden interstate commerce as did the state statute in *Allenburg Cotton Co.*

the market for its product in a state (or country) other than its state (or country) of incorporation, there is clearly notice it may be subject to suit in the State where such activities occur. 444 U.S. at 297, 62 L.Ed.2d at 501. As stated by Justice White:

> "The forum state does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum state." (Citation omitted.) *Id.*, 444 U.S. 297, 298, 62 L.Ed.2d 502.

The assertion of *in personam* jurisdiction over a non-resident corporation for the purpose of protecting its citizens such as Appellee Coons from defective products does not require a state grant to such non-resident corporation who does not register to do business or otherwise provide representation in that state a statutory privilege of a two-year limitation for negligence actions, such as afforded by *N.J.S.A.* 2A:14-2. Put bluntly, if a corporate manufacturer is going to take the risk of delivering defectively designed products into the stream of commerce within a state without registering to do business, it does not appear an irrational condition that in exchange for the "privilege" of utilizing that state's statute of limitations period the corporation must first register to do business or otherwise provide representation in the state so as to facilitate service of suit for personal injuries alleged to arise from its defectively designed products.

CONCLUSION

Based on the foregoing, it is respectfully submitted that Appellee-Movant Coons' Motion to Dismiss should be forthwith granted.

Respectfully submitted,

JAFFE & SCHLESINGER, P.A.
Attorneys for Appellee-Movant
8 Mountain Avenue
Springfield, N.J. 07081
(201) 461-2246

By /s/ Robert H. Jaffe
ROBERT H. JAFFE

Dated: July 21, 1981

APPENDIX A

SUPERIOR COURT OF NEW JERSEY
Law Division: Middlesex County
Docket No. L-9016-78

WALTER P. COONS,

Plaintiff,

vs.

AMERICAN HONDA MOTOR COMPANY, INC., a corporation, HONDA MOTOR COMPANY LTD. OF JAPAN, a corporation, JOHN DOE and RICHARD ROE, INC., et al.

Defendants.

NOTICE OF MOTION FOR SUBSTITUTED SERVICE UPON DEFENDANT HONDA MOTOR COMPANY LTD. OF JAPAN
(Filed November 5, 1979)

TO: John I. Lisowski, Esq.
Morgan, Melhuish, Monaghan
and Spielvogel, Esqs.
301 South Livingston Avenue
Livingston, NJ 07039

SIRS:

PLEASE TAKE NOTICE that on Friday, November 16, 1979 at 9:00 o'clock in the morning or as soon thereafter as counsel may be heard the undersigned, attorneys for plaintiff Walter P. Coons, shall apply to the Superior

Court of New Jersey, Law Division, Middlesex County, for an Order pursuant to Rule 4:4-4(c) permitting plaintiff to serve defendant Honda Motor Co., Ltd. of Japan by mail to Tanaka, Walders & Ritger, 1919 Pennsylvania Avenue, Washington, D.C. 20006. In support of this motion, the undersigned shall rely on the attached affidavit.

In accordance with Rule 1:6-2 it is requested that this matter be ruled upon by reference to the attached papers. A proposed order is enclosed herewith.

ROBERT H. JAFFE, P.A.
Attorneys for Plaintiff

/s/ Howard G. Schlesinger
HOWARD G. SCHLESINGER

CERTIFICATION

I hereby certify that the original of this pleading is being filed with the Clerk of the Superior Court of New Jersey and a copy is being filed with the Clerk of Middlesex County and that service of the within Notice of Motion has been made in accordance with Rule 1:5.

/s/ Howard G. Schlesinger
HOWARD G. SCHLESINGER

DATED: November 1, 1979

I hereby certify that the foregoing is a true copy of the original on file in my office.

Clerk

AFFIDAVIT OF COUNSEL IN SUPPORT OF MOTION FOR SUBSTITUTED SERVICE

Filed November 5, 1979

STATE OF NEW JERSEY:

: ss.

COUNTY OF UNION :

HOWARD G. SCHLESINGER, of full age, being duly sworn according to law, upon his oath, deposes and says:

1. I am attorney-at-law of the State of New Jersey, an associate in the law firm of Robert H. Jaffe, P.A. and am familiar with this matter.

2. In connection with this matter, our office attempted to locate the defendant Honda Motor Company Ltd. of Japan within the State of New Jersey. On April 3, 1979 I forwarded a letter to the New Jersey Secretary of State seeking the status of said corporation. Copy of said letter is annexed hereto as Exhibit "A".

3. On April 6, 1979 our office received a report from the Secretary of State noting that they had no record of Honda Motor Company Ltd. of Japan on file. A copy of said notification is annexed hereto as Exhibit "B".

4. Thereafter, our office received correspondence dated December 22, 1977 from the public record file of the National Highway Traffic Safety Administration wherein it was stated that Tanaka, Walders & Ritger of Washington, D.C. was the agent for Honda Motor Company Ltd. of Japan within the United States. A copy of the December 22, 1977 letter is annexed hereto as Exhibit "C".

5. Thereafter our office contacted Tanaka, Walders & Ritger in Washington and we were advised that they, in

fact, are authorized to accept service of process on behalf of Honda Motor Company Ltd. of Japan.

6. This affidavit is being submitted in support of plaintiff's motion to permit service on defendant Honda Motor Company Ltd. of Japan by certified mailing of a summons and complaint to Tanaka, Walders & Ritger, 1919 Pennsylvania Avenue, Washington, D.C. 20006.

/s/ Howard G. Schlesinger
HOWARD G. SCHLESINGER

Sworn and subscribed to before me
this 1st day of November, 1979

I hereby certify that the foregoing is a true copy of the original on file in my office.

Clerk

/s/ Maryjane D. Tokarz
MARYJANE D. TOKARZ
A Notary Public of New Jersey
My Commission Expires January 26, 1981

EXHIBIT "A"

LETTER DATED APRIL 3, 1979
FROM ROBERT JAFFE, P.A.
TO N.J. SECRETARY OF STATE

LAW OFFICES
ROBERT H. JAFFE, P.A.

Robert H. Jaffe
Howard G. Schlesinger
8 Mountain Avenue
Springfield, New Jersey 07081
(201) 467-2246

April 3, 1979

Honorable Donald Lan
Secretary of State
State House
P.O. Box 1330
Trenton, New Jersey 08625

Re: Honda Motor Company, Ltd. of Japan

Dear Sir:

The undersigned has been retained in connection with a matter involving Honda Motor Company, Ltd. of Japan, Inc. Based on information available to me, it would appear that Honda Motor Company, Ltd. of Japan, Inc. is a foreign corporation incorporated outside the United States. By this letter I hereby request the name and address of the registered agent in the State of New Jersey and a copy of its annual report for the fiscal years 1976 and 1977.

Enclosed please find check in the amount of $2.00 to cover the cost of obtaining the annual reports.

Very truly yours,

ROBERT H. JAFFE, P.A.

/s/ Howard G. Schlesinger
HOWARD G. SCHLESINGER

EXHIBIT "B"

STATUS REPORT OF HONDA LTD.
FROM N.J. SECRETARY OF STATE

ROBERT H. JAFFE, PA
8 MOUNTAIN AVE.
SPRINGFIELD, NJ 07081

LAWYER ROBERT H. JAFFE, PA AUDIT CODE 20
PAYMENT TYPE CHECK

NAME: HONDA MOTOR COMPANY LTD
OF JAPAN

NOTE NO RECORD OF THE
ABOVE MENTIONED CORPORATION

EXHIBIT "C"

**LETTER DATED DECEMBER 22, 1977
FROM HONDA LTD.
TO NATIONAL HIGHWAY TRAFFIC SAFETY
ADMINISTRATION OFFICE OF COMPLIANCE**

**HONDA
AMERICAN HONDA MOTOR CO., INC.
P.O. BOX 50—100 W. ALONDRA BLVD.,
GARDENA, CALIF. 90247
CABLE ADDRESS—AMEHON, GARDENA, CALIF.
(213) 327-8280**

December 22, 1977

Office of Compliance
National Highway Traffic Safety Administration
Washington, DC 20591

Gentlemen:

On December 16, 1977, Honda Motor Co., Ltd., determined that a defect which relates to motor vehicle safety exists in the fuel filler cap release mechanism of certain Honda motorcycles.

The following defect information report is being submitted in accordance with regulations in Part 573.

1. Name of Manufacturer: Honda Motor Co., Ltd.
2. Manufacturer's Agent: Tanaka Walders & Ritger
   1819 H Street, NW
   Washington, DC 20006

2. Identification of Potentially Affected Vehicles:

Model	Description
CB 750	K0, K1, K2, K3, and 1974, 1975 and 1976 Model Years
CB 550	1974, 1975, and 1976 Model Years
CB 500	K0, K1, and K2
CB 500T	1975 and 1976 Model Years
CB 450	K3, K4, K5, K6, and 1974 Model Year
CL 450	K3, K4, K5, and K6
CB 400F	1975 and 1976 Model Years
CB 360	1974 Model Year
CB 360G	1974 Model Year

CB 360T	1975 and 1976 Model Years
CL 360	1974 and 1975 Model Years
CB 350	K3, K4, and K5
CL 350	K3, K4, and K5
SL 350	K0, K1, and K2
CB 350F	F0 and 1974 Model Year
CB 200	1974 Model Year
CB 200T	1975 and 1976 Model Years
CL 200	1974 Model Year

Dates of manufacture of affected vehicles will be supplied as soon as available.

3. Total Number of Vehicles Potentially Affected: Approximately 1,390,000.

4. Estimated Percentage of the Potentially Affected Vehicles that Contains the Defect: 100%.

5. Defect Description: During a collision, it may be possible for the rider to impact the hinged fuel filler cap in such a manner as to actuate the release lever resulting in opening of the cap. If the cap opens, gasoline will escape and cause a fire hazard.

6. Chronology of all Principle Events that were the Basis for the Determination of the Existence of a Safety Defect:

December 15, 1977	Meeting between Honda and NHTSA concerning hinged fuel filler cap investigation.
December 16, 1977	Honda Motor Co., Ltd., determined that a safety relate defect existed.

7. Measures to be Taken to Repair the Defect:

Information will be provided as soon as available.

Very truly yours,
AMERICAN HONDA MOTOR CO., INC.

/s/ C. L. Hale
C. L. HALE
Vice President
Technical Division

CH:lf

APPENDIX B

SUPERIOR COURT OF NEW JERSEY
Law Division: Middlesex County
Docket No. L9016-78
CIVIL ACTION

WALTER P. COONS,

Plaintiff,

vs.

AMERICAN HONDA MOTOR CO., INC., a corporation, HONDA MOTOR COMPANY, LTD. OF JAPAN, a corporation, JOHN DOE and RICHARD ROE, INC., et al.,

Defendants.

MORGAN, MELHUISH, MONAGHAN AND SPIELVOGEL
Attorneys for Defendant, American Honda Motor Co., Inc.
301 South Livingston Avenue
Livingston, New Jersey 07039
(201)994-2500

ANSWER, DEMAND FOR DAMAGES AND JURY DEMAND FILED BY HONDA, LTD.

The defendant, Honda Motor Company Ltd. of Japan, by way of Answer to the Complaint filed herein, says:

1. This defendant admits that the plaintiff was the owner of a 1972 Honda CB 350 motorcycle, and further that on October 30, 1974 the plaintiff was involved in an accident.

2. This defendant further admits that it assembled the 1972 Honda CB 350 motorcycle.

3. It denies the remainder of the allegations of the Complaint.

FIRST SEPARATE DEFENSE

The claimant was guilty of contributory negligence in failing to exercise due and proper care under the existing circumstances and conditions.

SECOND SEPARATE DEFENSE

Any and all injuries and damages sustained were the result of a third party over whom this defendant had no control.

THIRD SEPARATE DEFENSE

The claimant assumed the risk and was fully cognizant of any and all circumstances surrounding the alleged incident.

FOURTH SEPARATE DEFENSE

The damages of the claimant, if any, are as limited by the applicable laws of the State of New Jersey as respects comparative negligence.

FIFTH SEPARATE DEFENSE

The complaint herein fails to state a claim upon which relief can be granted and this defendant reserves the right to move at or before the time of trial to dismiss same.

SIXTH SEPARATE DEFENSE

The applicable law, rule, statute or regulation, including, but not limited to, the Statute of Limitations, controlling or requiring the institution of suit within a certain period of time following its accrual, was not complied with by the claimant, and, accordingly, the claimant's claim is barred as a matter of law.

SEVENTH SEPARATE DEFENSE

The incident and injury complained of were caused by unauthorized, unintended or improper use of the product complained of and as the result of failure to exercise reasonable and ordinary care, caution or vigilance.

DEMAND FOR STATEMENT OF DAMAGES

PLEASE TAKE NOTICE that pursuant to R. 4:5-2 the parties filing this answer require that you, within five days, furnish them with a statement of the damages claimed.

DEMAND FOR TRIAL BY JURY

PLEASE TAKE NOTICE that this defendant demands a trial of the issues by a jury of twelve persons.

CERTIFICATION

I hereby certify that a copy of the within document has been filed with the Clerk of the captioned Court and within County Clerk, if applicable, and that a copy of the same was served upon all interested attorneys within the period of time allowed in accordance with the Rules of the Court (R. 1:6-4 or 4:6-1 (a) as may be applicable).

MORGAN, MELHUISH,
MONAGHAN AND
SPIELVOGEL

By: /s/ John I. Lisowski

Dated: December 27, 1978

APPENDIX C

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION OFFICE OF DEFECTS INVESTIGATION, INVESTIGATING REPORT O.D.I. CASE NO. C3-02— TABLE OF CONTENTS OMITTED

I. BACKGROUND

A. *Basis for Investigation*

This case was opened based on reports of two operators of 1971 Honda CB750 motorcycles who sustained burn injuries during a traffic accident. Both reports alleged the gas caps came opened allowing fuel to escape.

Investigation was initiated to determine whether the alleged problem constituted a safety-related defect within the meaning of the National Traffic and Motor Vehicle Safety Act of 1966 (Act of 1966). The NHTSA's objectives were to discover whether the alleged problems occur and, if so, whether such occurrence results in fire, property damage or injury, accidents, or other safety-related problems.

B. *Description and Function*

Subject motorcycles are equipped with gas caps which are hinged on its forward side and secured by a latch on its rear side. Two styles of caps exist—the "single action" and the "double action" styles. The single action cap is opened by depressing a latch lever. The double action cap is opened by simultaneously depressing the latch lever and the cap.

C. *Analysis of the Alleged Problem*

Failure Mode: Reportedly, subject gas tank caps can be unintentionally opened in an accident situation due to rider contact with the tank cap and latch lever.

Failure Symptoms: There are no known pre-failure warning symptoms.

II. FAILURES ALLEGED AND NHTSA ACTIONS

The following reports of unintentional gas cap opening involving subject motorcycles as well as resulting injury or property damage accidents or other safety hazards were acquired during the investigation. NHTSA action, including follow-up investigation, document review and analysis, are also included herein.

A. *Consumer Reports directly to NHTSA (55) (A17) (131)**

1. John Grochala
   8242 Creek Line Drive
   San Antonio, Texas
   Date of Accident: March 17, 1974

Mr. Grochala and his wife, riding a 1973 Honda CB350 with a double action gas cap, impacted the rear of stopped pickup truck at approximately 55 mph. Both riders suffered severe orthopedic injuries.

A fire broke out resulting in reported third degree burns to Mr. Grochala's lower body. In their letter dated January 29, 1976, Honda states their belief that the Grochala cap was "closed during the fire." NHTSA examination of the gas tank shows depressions on its top surface and that the latch hook and lever are missing.

2. Alan R. Lewis (1.8) (A21.1) (131)
   130 Vernon Avenue
   Rockville, Connecticut
   Date of Accident: June 1976

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* Number shown in parenthesis represents the case file identification number wherein further details can be found.

According to Mr. Lewis, he was operating his 1973 Honda Cl-350 with a double action cap when a car turned in front of him. Anticipating the crash, he "braced" himself by placing his right hand on top of the tank and cap. He struck the car broadside at an estimated 15 to 20 mph. Following the impact, the gas cap was observed to open. No fire resulted.

3. David J. O'Connor (5) (A18) (131)
   2659 Northeast 59th Street
   Seattle, Washington
   Date of Accident: September 10, 1971

Mr. O'Connor, riding a 1971 Honda CB750 with a double action cap, struck a piece of wood in an intersection at an estimated 40 mph and crashed. A fire broke out resulting in reported third degree burns on O'Connor's legs and left hand and first and second degree burns on the other parts of his body. Mr. O'Connor believes he slid over the top of the tank and opened the cap. Honda, in the ensuing litigation, expressed their belief that the cap did not open. Three witnesses testified that they observed the cap to be open following the accident.

4. John S. Peters (1.3) (A7) (131)
   5107 W. 133rd Street
   Hawthorne, California
   Date of Accident: November 15, 1974

Mr. Peters and a passenger, on a 1973 Honda CB350 with a double action cap, struck the rear of a stopped automobile at an estimated 15 mph. A fire broke out resulting in reported serious burns to Peter's extremities and abdomen. The passenger suffered burns of his hands, leg, and crotch area. Examination of the gas tank shows depressed areas on its top half.

5. Frederick D. Stueve (1.11) (A19) (93) (131)
   2517 Lincoln Street
   Topeka, Kansas
   Date of Accident: August 31, 1975

Mr. Stueve, operating his 1972 Honda CB450 with a double action cap, was struck by an automobile traveling approximately 20 mph. The automobile's right front corner made deep penetration into the motorcycle's gas tank. A fire broke out resulting in fatal injuries to Mr. Stueve who sustained second and third degree burns over 85% percent of his body. Fuel escaped from six rivet holes in the side of the tank where an ornament was evidently mounted by the owner. The accident dynamics and the lack of damage to the motorcycle's top side suggest that Mr. Stueve did not move forcefully forward onto the tank, thus, it is considered improbable that the cap opened due to rider contact.

6. Francis W. Wheelock (A5.1) (17.1) (131)
   7655 Third Street
   Dexter, Michigan 48130
   Date of Accident: April 9, 1972

Mr. Wheelock and a passenger, on 1970 Honda CB750 with a single action cap, struck an automobile head-on at a closing speed of no less than 45 mph. The accident resulted in "serious" physical injuries to both riders. No fire occurred. Examination of the tank shows its top side to be badly dented and cap opened as per page 14.

7. Richard N. Williams (71) (A22) (131)
   1465 Seminary
   Oakland, California
   Date of Accident: May 18, 1975

Mr. Williams, operating his 1973 Honda CB750 with a double action cap, lost control of his motorcycle and

crashed. It is reported that the motorcycle's front end separated from the rest of the cycle. A fire broke out resulting in reported burn injuries to Mr. William's arms, hands, legs, pelvic and torso area. A few small dents are present on the surface of the gas tank. The cap latching mechanism is missing and could have sheared off, melted, or both.

8. Terry A. Wisler (88) (90) (91) (A21) (131)
   Key Largo, Florida
   Date of Accident: September 19, 1975

Mr. Wisler, operating his 1972 Honda CB750 with a double action cap, struck the side of a Winnebago motorhome at an impact speed of approximately 40 mph. Mr. Wisler died from severe orthopedic injuries sustained from the impact. In addition, a fire broke out causing third degree burns to his legs. The gas tank shows extensive crush damage on top side and the gas cap and portions of the latching mechanism are missing and appeared to have "torn" loose. A puncture hole approximately .25 inches in diameter was also found on the tank.

B. *Consumer Reports through Honda*

1. Augusta C. Prentiss (50) (A20) (131)
   5516 Arizona
   Concorde, California
   Date of Accident: December 8, 1973

Mr. Prentiss, operating his 1970 Honda CB750 with a double action cap, struck a vehicle head-on at an estimated closing speed of 70 mph. A fire broke out resulting in reported first, second, and third degree burns on Prentiss' face, arms, and upper body. Examination of the gas tank shows severe crush damage on its top and sides. The gas cap is missing and the latch hook is also missing.

2. Ted J. Vaughn (50) (A13) (131)
2149 W. 230th Street
Torrance, California
Date of Accident: June 12, 1973

Mr. Vaughn and a passenger, riding a 1970 Honda CB450 with a single action cap, struck the rear end of a slow moving car at an estimated speed of 30 mph. A fire broke out resulting in fatal burn injuries to Mr. Vaughn and minor burn injuries to the passenger. Examination of the motorcycle gas tank shows a small depression on its top side.

C. *International Four Owners Association (IFOA)*

The IFOA is an association of Honda motorcycle owners, particularly owners of four-cylinder Honda motorcylces. The IFOA advised the NHTSA of one accident.

1. Wiliam Mitchell (6) (A16) (131)
Crested Butte, Colorado

Mr. Mitchell, operating his 1971 Honda CB750 with a double action cap, collided with the side of a laundry truck which "sideswiped" him. A fire broke out resulting in third degree burns on Mitchell's face and 60 percent of his body. Examination of the gas tank shows extensive crush damage on its right and top side.

D. *Summary of Failures*

A total of eleven reports of unintentional gas cap opening involving subject motorcycles have been received by the NHTSA. One of these, involving Mr. Stueve, does

not appear to relate to the failure made under investigation. Details of the other ten accidents are tabled below.

Name	Estimated Closing Speed	Type of Tank Damage	Fire	No. of Burn Inj.	Fatal
Grochala	55	top surface depressed, latch broken	yes	2	0
Lewis	20	little or none	no	0	0
O'Connor	40	little or none	yes	1	0
Peters	15	top surface depressed	yes	2	0
Wheelock	45	top surface depressed	no	0	0
Williams	unk	top surface depressed, latch broken	yes	1	0
Wisler	40	top surface depressed, tank punctured, latch broken, cap missing	yes	yes	1
Prentiss	70	top surface depressed, latch broken, cap missing	yes	1	0
Vaughn	25	top surface depressed	yes	1	1
Mitchell	25	top surface depressed	yes	1	0

It is noted that the incidents involving Messrs. Grochola, Wheelock, Wisler, and Prentiss involved high speed accidents with severe orthopedic injuries to riders.

III. TECHNICAL DATA ACQUIRED AND NHTSA ACTIONS

The following information bearing upon the design, construction, materials, and performance aspects of subject motorcycles was acquired during the investigation. NHTSA action, including document review and analysis, are also included herein.

A. *Honda Motor Company*

1. *Design*

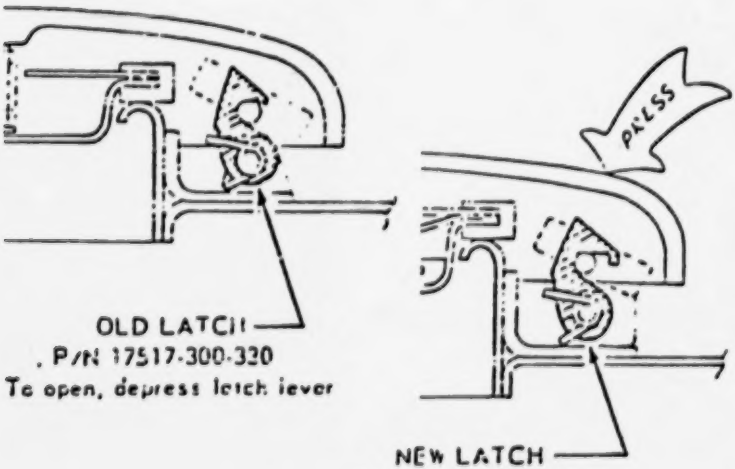
The two styles of subject gas caps are identified by the following part numbers:

Style	Part Number
single action	17517-300-330
double action	17517-300-340

A Honda service bulletin dated January 13, 1971, (130) announced that:

"Current models using the hinged fuel tank caps are equipped with a redesigned latch for additional security."

The sketch included in that service bulletin is shown below:



2. Construction

By letter dated April 4, 1977, (119) Honda provided production figures for motorcycle models using subject hinged gas caps.

Year and Model	No. motorcycles produced	
	single action	double action
1970-1976 CB750	38,413	243,596
1974-1976 CB550	0	81,286
1971-1973 CB500	0	86,411
1975-1976 CB500T	0	39,691
1970-1974 CB450	19,198	112,863
1970-1973 CL450	14,181	43,782
1975-1977 CB400F	0	36,585
1974 CB360	0	38,694
1975-1976 CB360T	0	93,356
1974-1975 CL360	0	19,533
1971-1973 CB350	0	193,337
1971-1973 CL350	0	126,734
1970-1972 SL350	38,727	58,049
1973-1974 CB350F	0	57,110
1974 CB200	0	13,020
1975-1976 CB200T	0	35,390
1974 Cl200	0	7,500
	110,519	1,286,937

It is noted that the single action gas caps listed above were used only during model years 1970 and 1971.

3. *Static Testing of Gas Cap*

a. *Drop Tests* (A6) (41)

Information received from Honda indicates they conducted a series of tests consisting of dropping rectangular and cannonball shaped objects weighing approximately 44 pounds from heights of 8.2 and 9.8 feet onto the cap and latch mechanisms of tanks with both single and double action caps. Of 13 drops onto tanks with single action caps, caps were observed to open in two instances. Of 11 drops onto tanks with double action caps, one

instance of cap opening occurred ue to damage of the latch hook.

b. *Latch Strength Tests* (A6)

Honda conducted tests to determine the static strength of the cap latching mechanism. Tests consisted of pulling on the latched cap from various angles. Tests were conducted using a fixture-mounted tank having a double action cap with results as shown below:

Direction of Load	Results
45 degree diagonal pull	latch hook broke at 440 lbs.
vertical pull	latch hook broke at 364 lbs.
horizontal pull	tank attaching mounts broke at 275 lbs.

c. *Crush Tests* (A6)

Honda conducted tests wherein gas tanks were run over by a "2-ton" truck. A series of four tests were run and none of the caps opened. It is noted that, in one case, the latch lever broke but the cap remained shut.

d. *Intentional Maneuver Tests* (A6)

Honda conducted tests which consisted of ". . . rolling and sliding portions of the human body, equipment and other objects on the fuel filler cap and the cap check" to determine if the cap could be opened intentionally. Using such body parts and equipment including elbows, knees, hands, boots, helmets, an athletic supporter, rollers, and a cylinder, the cap could be opened in each instance.

4. *Dynamic Testing of Gas Cap*

a. *Sled Tests* (A3)

Honda conducted tests using a sled and rail system wherein tanks, in various positions, were impacted into a

barrier. Using tanks with double action caps, tests were conducted on both production tanks and on tanks with intentionally deformed latching mechanisms. In five tests using production tanks, none of the caps opened. Of 17 tests with deformed latching mechanisms, one cap, whose latch spring was removed, opened on impact. Honda, on the basis of these tests, concludes that subject caps cannot be opened due to collision impact forces alone.

b. *Crash Tests* (A6) (41)

Honda conducted a series of eight crash tests using anthropomorphic dummies mounted on motorcycles with tanks having double action caps. Tests were conducted at various motorcycle speeds ranging from 5 to 30 mph and consisted of crashes into fixed barriers and automobiles. None of the caps opened upon impact. A similar series of three crash tests were conducted by Honda using motorcycles equipped with single action gas tank caps. These crash tests were conducted with wet paint on the cap and latch lever to determine if the dummy and the cap or latch made contact. Results of the test showed the caps did not open and that there was no contact between the dummy and the cap or latch lever.

Honda also furnished other crash test data for which they conclude that:

> ". . . tests do not show the possibility of the fuel filler cap being opened as a result of the rider's body contacting the vicinity of the cap."

5. *Honda Position*

By letter dated November 14, 1972, (12) Honda advised that, in the event of an accident, the necessary forces to open a subject cap ". . . might be created by riders" but that the chance of this happening is "extremely remote."

By letter dated January 29, 1976, (72) Honda states that ". . . subject motorcycles do not contain a defect related to motor vehicle safety." This position is based on Honda's analysis of accidents involving the alleged failure mode and on simulated crash tests for which Honda concludes that ". . . the alleged failure mode does not in fact occur in real-life situations."

B. *NHTSA Testing*

1. *ODI Static Tests* (A4)

Tests were conducted by the Office of Defects Investigation (ODI), NHTSA, to determine if subject gas caps could be opened by sliding and pressing movements of the human body on the gas cap and latch lever. Testing was conducted on a stationary motorcycle and included both single and double action caps. Significant test results showed that the single action and the double action cap could be opened by:

a. sliding the crotch area over the top of the tank.

b. sliding the left leg (shin section) across the rear portion of the cap and latch lever.

c. striking the cap and latch lever with the heel of the hand.

2. *R and D Crash Testing* (54)

Under the contract DOT-HS-126-1-186, the Office for Research and Development (R and D), NHTSA, conducted two crash tests using motorcycles equipped with Honda gas tanks with "flip-top filler caps." Both tests involved 30 mph skids, one with a dummy rider only and the other with a dummy rider and passenger. Significant reported observations were as follows.

a. Test with rider only: When the motorcycle skidded, the dummy rider is reported to have ejected

cleanly." the fuel tank filler cap remained intact with no leaking of simulated fuel.

b. Test with rider and passenger: It is reported that the front dummy ". . . made sliding pelvic contact with the fuel tank." The gas cap remained closed, however, with no loss of fuel.

IV. OTHER NHTSA ACTIONS

The following are results of other NHTSA actions taken during the investigation.

A. *Public Advisory Action*

The NHTSA's November 14, 1973, "Defect Investigatory Cases Report" announced the pendency of this investigation. A similar release, which is repeated at monthly intervals during a pending investigation, is sent to more than 4,000 newspapers, radio and television stations as well as to other media representatives, consumer groups and organizations whose total consumer readership or audience is estimated in the tens of millions. The NHTSA's February 28, 1975, release of the foregoing report announced that this case was placed in the "suspended" category.

On June 17, 1976, the Department of Transportation issued a Consumer Advisory announcing the reactivation of this case. This special advisory requested consumers to write to the Agency if they ". . . experienced gasoline leakage or fires due to dislodgement of their gas tank filler caps. . ."

B. *NHTSA Publications Search*

During this investigation, a search for pertinent published information disclosed the following:

1. *Motorcycle Facts*, National Safety Council (NSC), Chicago, Illinois, November 1974. (A10)

The NSC publication contained the following statistics regarding motorcycle accidents:

- In 1973, there were approximately 4,222,000 motorcycles registered in the United States.
- In 1973, some 360,000 accidents involving motorcycles were reported. This is 8.5 percent of the registered motorcycles.
- In 1973, 2,850 motorcyclists were killed in accidents.
- Nationally, for *all* types of vehicles, 8.1 percent of accidents involved death or injury.
- Regarding injuries, the NSC reports that ". . . the parts of the motorcyclist's bodies most often injured are the head, arm, and leg."
- Studies in two states revealed that the speed range most often recorded in motorcycle accidents was 21 mph to 30 mph.

2. *Analysis of Motorcycle Accident Reports and Statistics*, Motorcycle Safety Foundation (MSF), Linthicum, Maryland. (A10)

Based on accident statistics, the most prevalent motorcycle accident occurs in an urban environment with the motorcycle striking another vehicle. The MSF report states that:

> "Evidence demonstrates that once a motorcycle accident occurs, there is a high probability that serious injury or a fatality will result."

3. *Fire in Motor Vehicle Accidents*, Peter Cooley, Highway Safety Research Institute, University of Michigan, April 1974. (A10)

The report revealed, in part, that:

- fires occur in approximately 0.1 percent of *all* motor vehicle accidents which occur in the United States.
- of the annual fatalities occurring in vehicle accidents, 1 to 1.5 percent ". . . resulted from vehicle fires."
- The Michigan Fatal Accident File showed 3 motorcycle fatal accidents with fires. In each case, the accidents were "side-impact" crashes which "ruptured the motorcycle fuel tanks."

C. *Vehicle Population* (132)

It is estimated that of the 1,397,456 motorcycles originally manufactured with single and double action gas caps, 1,334,595 would be remaining as of June 1977.

D. *Estimate of Accidents Involving Subject Motorcycles* (132)

Based on accident statistics and the estimated vehicle population, it has been calculated that, as of June 1977, some 517,000 accidents have already occurred involving subject motorcycles. It is predicted that some 778,000 accidents will still occur for subject motorcycles during their remaining lifetimes.

E. *Record Checks*

1. *Vehicle Owner Letter File*

The NHTSA's motor vehicle owner letter file, initiated in September 1966, contains all letters and telephone con-

tacts received from all sources reporting defects and other problems with motor vehicles. At present, approximately 1,500 documents enter the file each month.

All pertinent reports found in the file are discussed under Section II.

2. *Accident Investigation Division (AID), Office of Statistics and Analysis NHTSA*

The AID contains records of accident investigations received by the NHTSA from 12 major sources, nationwide. As of September, 1975, the results of approximately 1,518,000 accident investigations are contained in the records checked by the AID.

Information relating to 17 motorcycle accidents which involved fires and/or gasoline leakage was analyzed. Eleven of the 17 did not contain information relevant to this case. The following table summarizes information regarding the remaining six cases.

Case File Index No.	Year and Model	Closing Speed	Reported Problem	Fire (Yes/No)
A5.1 *	1970 Honda 750	45	Cap opened	No
A5.3	1970 Triumph	60	Gas Line Ruptured	Yes
A5.11	1971 Kawaski 500	55-65	Gas Line Ruptured	No
A5.14	1971 Norton	35	Gas Line Ruptured	No
A5.16	1972 Honda 450	60	Fuel Tank Ruptured	No
A5.17	1972 Harley-Davidson	50	Gas Line Ruptured	Yes

* This is the Francis Wheelock accident which was discussed in section II.

The AID also furnished a summary of accident data obtained in their Michigan/Illinois study as follows: (37)

Location	Environment	No. of Accidents	No. Fires Reported
Michigan	urban/rural	4,380	0
Chicago	urban	126	0
Illinois	interstate	1,102	6

The summary states that the Michigan data is "considerably under-involved" in reported fires probably due to non-reporting. The six accidents involving fires in Illinois represent the "higher speed, more severe" accidents. These six accidents involve two Suzukis, two Harley-Davidsons, one Honda, and one BSA motorcycle. No information is available regarding fire causation.

3. *NHTSA Motor Vehicle Safety Defect Recall Campaign Log*

The log contains the make, model, model year and a brief description of the defect for all safety defect recall campaigns reported to the NHTSA by manufacturers in accordance with the Act of 1966. A search of the log disclosed no campaigns related to this investigation.

V. OBSERVATIONS

1. Of the total of 11 reports of unintentional gas cap openings, five involve relatively non-violent accidents in terms of speed, tank damage, and/or orthopedic injuries sustained by the riders. These five incidents involved Messrs. Lewis, Mitchell, O'Connor, Peters, and Vaughn.

2. An estimated 517,000 accidents have already occurred involving subject motorcycles. Some 778,000 more accidents are expected to occur involving subject motorcycles during their remaining lifetime.

Manufacturer Technical Bulletins

The NHTSA's records contain all manufacturer technical bulletins received by the NHTSA from motor vehicle and equipment manufacturers in accordance with the Act of 1966. The bulletins contain instructions for correcting purported non-safety related defects or other service related problems involving the manufacturer's product.

A search of the NHTSA files disclosed one related bulletin previously discussed in section III.

Parts Return Program (PRP)

The PRP, organized in 1971, has been participated in by approximately 500 independent automotive repair shops located throughout the United States who, since the program's inception, have submitted more than 4,500 defective parts to the NHTSA for examination as to whether they represent a safety hazard. The September 1976 PRP newsletter contained an article regarding this investigation. No data pertinent to this investigation has been received in the program.

3. Accident studies reveal that a motorcyclist, once involved in an accident, will probably suffer serious injury or death. Further, if the accident involves relatively high speeds, there is also the chance a fire will occur due to gas tank or gas line rupturing.

4. Sled and crash tests demonstrated that subject gas caps did not open due to collision impact forces alone. Anthropomorphic dummies mounted on crashed motorcycles made no apparent contact with the gas cap.

5. Static tests demonstrate that subject gas caps can be opened by an contact maneuver or impact which depresses the cap and/or latch lever in the correct design sequence. These maneuvers can include sliding and

pressing movements of the human body over the top of the gas cap and latch lever.

VI. CONCLUSION

Investigation established that unintentional gas cap opening can occur due to rider contact with the tank cap and latch lever. Five possible incidents of gas cap opening involving relatively non-violent accidents have occurred resulting in four fires and burn injuries to six riders.

Many thousands of accidents involving subject motorcycles are expected to occur in the future with the accompanying potential for gas cap opening incidents, fires, and burn injuries to riders.